IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1841 of 2001

with

CIVIL APPLICATION No 4437 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AHMEDABAD MUNICIPAL CORPORATION

Versus

MOHTA TEXTILE

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Appearance:

MR MG NAGARKAR for Appellant

MR NISHITH P THAKKAR for Respondent

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CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Ahmedabad Municipal Corporation has filed the present appeal against the judgment and order passed by the Small Cause Court, Ahmedabad in Municipal Valuation Appeal No. 2748 of 1996 on 4.4.2000. Before the Small Cause Court, Ahmedabad, Respondent herein challenged the fixation of Gross Rateable Value fixed at Rs. 2,60,247/ by the Corporation in respect of Survey No.295 paikee situated in Ward Danilimda of Ahmedabad city for the year 1995-96. The trial court was persuaded to accept the report of one Mr. N.P. Parmar for arriving at the value of the property. Before us, the report which is signed by one Shri N.P. Parmar is produced for the purpose of perusal to substantiate the contention that value of the property is only Rs. 61,000/-. In the report, nowhere it is indicated as to what price has been actually paid by the assessee for purchase of the property in question. So far as the cost of construction is concerned, it is mentioned in the report that construction commenced in the year 1993 and was completed in 1994. The valuer has not stated about the method of construction adopted by the assessee i.e. whether it was on contract basis or was done by employing the labour contractor or by both the methods. What amount was actually paid is also not stated. The report indicates that the constructed property is constructed with brick masonry load bearing wall structure with ground floor construction, internal cement plaster with white wash. Doors and windows are made with M.S. and R.S. for factory iron frame with fully glassed iron windows with iron e.t.c. There is rough Kota stone flooring, with white wash glased tiles in w.c. bath. Open electric fitting is done with ordinary class of fittings. Brick masonry, compound wall, U.G.W.Tank, O.H.W. Tank with 8" dia bore 300' deep and .5 H.P. motor with pumpings arrangement etc. are done. 4 sale instances are indicated and the price per sq. mt. ranges from Rs. 21.25 to Rs.71.80 and average is taken at Rs. 44/- per sq. mt. However, the valuer has considered the land price for this agricultural land without NOC and NA permission at Rs. 22/- per sq.mt. The area is within the limit of Municipal Corporation. Possession of the assessee is in the form of ownership. The land was purchased in the year 1991 admeasuring 5648 sq.mt.

#. We are of the view that the trial court has blindly relied upon this report without examining the same. The

trial court ought to have called upon the assessee to produce the registered sale deed. As a matter of fact, in the absence of documents such as registered sale deeds or satisfactory document with regard to construction of property, reliance ought not to have been placed by the trial court on the say of the assessee. It is required to be noted that the valuer's report is just for the sake of assistance. If the property is purchased and price indicated in the registered sale deed is required to be tested, then in such case, registered valuer will examine the sale instances, nature of property, persons who have carried out construction and who have paid price for construction and such other aspects. Therefore, this valuation report could be utilized for the purpose of assistance only. If all the details are given, the report can be accepted. In the instant case, it is pointed out, that the value of the land is considered at half of the price and no evidence is produced before the valuer for the cost of the construction and purchase of the land. In the absence of documents such as registered sale deed or the bills for construction, such report made by the valuer to arrive at a conclusion as to what could be the approximate value of the property. In our opinion, when such is the report, it was the duty of the Corporation to request the court for cross-examination. Mr. Nagarkar states that in hot haste, the matter has been decided by the trial court. He submitted that fair opportunity is required to be given. We think that the request is just and fair. It is for that purpose, we remand the matter to the Small Cause Court. Before the Small Cause Court, on behalf of the Corporation, application shall be made and as and when the application is made, the trial court shall consider the same in accordance with law and shall decide the same. We direct that the Small Cause Court shall decide the matter within a period of three months from the date of receipt of this order. The Corporation, without waiting for process from this Court shall approach the trial court and shall also serve copy to the other side. With this direction, the order passed by the Small Cause Court is quashed and set aside. The appeal stands allowed accordingly with a direction to decide the matter afresh. Consequently,

[B.C. PATEL, J.] [SHARAD D. DAVE,J.]

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